

Part I - Compliance Reviews



U.S. Department
of Transportation
**Federal Aviation
Administration**

Recommended Practices for a Complete and Compliant DBE Contract File

Office Of Civil Rights

*ACHIEVING SAFETY
THROUGH DIVERSITY*

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Purpose and Outcome

- Assist Recipients in the effective implementation of the DBE Program
- Present information to grant Recipients on effective documentation of implementation
- Provide Recipients with a better understanding on how to be prepared for an FAA Compliance Review

Why Does FAA Conduct Program Compliance Reviews?

- Ensure contract compliance
- Provide technical assistance
- Share and note best practices
- Identify national trends
- Identify areas of improvement

Elements of a Review

- Administrative Requirements
- Solicitation Processing and Contract Reviews
- Monitoring Post Contract Award
- DBE Participation Reporting

DBE Administrative Requirements

DBE Program

DBE Program should be:

- Up to date
- Signed, the policy statement
- Disseminated to relevant parties in your organization
- Implemented as written, including:
 - Solicitation/Contract Language
 - Enforcement Mechanisms

DBE Program

- DBE Liaison Officer Duties
- Direct independent access to CEO
- Measures for ensuring nondiscrimination
- Compliance and enforcement procedures
- Monitoring and enforcement mechanisms
- Responsive or Responsibility
- Alternative contracting and procurement methods

DBE Program

- DBE Financial Institutions
- Method for Collecting Bidders List Information
- Prompt Payment Provisions
- Small Business Element
- Mentor-Protégé Programs

DBE Goals

- Approved three-year goal/methodology
- Implementation of race-neutral (RN)/race-conscious (RC) methods
 - Contract goals are race-conscious
- Tailored contract goals
- How contract goals are expressed
- Monitor progress towards goals
- Update as necessary

Other Administrative Requirements

- Over-Concentration
- Complaints
- Complaint Procedures
- Prompt Payment Complaint Reporting

Solicitation Processing and Contract Reviews

Documentation Pre-Solicitation

- Goal Determination
 - NAICS code analysis
 - RC v RN determination
- Outreach Plan
 - Available firms
 - Certification
 - Technical assistance

Documentation

Solicitation – **RC Goal**

- DBE Goal
- Good Faith Efforts (GFE) Requirements
- DBE Information Submission Requirements
- Bidders List Forms
- Required Contract Provisions

Documentation

Solicitation – Race Neutral

- Language stating that requirements of regulation apply, for example:
 - *The requirements of 49 CFR part 26 (or 23) apply to this contract. It is the policy of _____ to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract.*
_____ encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.
- *Cannot include a contract goal*

Documentation

- Solicitation – Cannot include:
 - Geographic preferences
 - Quotas or set-asides
 - Group-specific goals (without FAA waiver)
 - Minority or Women Business Enterprise goals based on a local program
- Written Certification that all records have been reviewed

Documentation

Pre-Award – **RC Goal**

- Determination if goal is met
- Determination of Good Faith Efforts, if required
 - Good Faith Efforts Documentation, ONLY if goal was not met
 - Administrative Reconsideration
- Contract Review

Documentation Pre-Award

- Contract Review
 - Nondiscrimination language
 - Prompt payment/retainage language
- Contracts with an RC goal must also include
 - Goal commitment
 - DBE termination/substitution language

Monitoring Post Contract Award

Documentation

Subcontract/Joint Venture Review

- ALL subcontracts
 - Nondiscrimination language - 26.13(b)
- Written certification

Oversight/Monitoring

- Oversight/Monitoring:
 - Every contract with DBE participation
- Monitoring must consist of:
 - Detailed process
 - Confirmation that the work committed to an DBE is performed by the DBE
- Monitoring must include:
 - Commercially Useful Function (CUF) review/worksite visit
 - Review of subcontracts, joint ventures, or other arrangements
 - Site visit observations
 - Written certification

Counting/Monitoring

Counting (26.55)

Commercially Useful Function

A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

Monitoring

- Every DBE on every contract
- Required records
- Commercially Useful Function documentation
- Written certification
- Preamble to the 2011 Final Rule

Monitoring Procedures

Tailored to the type of participation

- Subcontracts
- Joint Ventures
- Truckers
- Suppliers
- Manufacturers
- Brokers

Monitoring Documentation

- Commercially Useful Function Review
- Site Visit
- DBE Subcontract/Joint Venture Document or Purchase Agreements
- Job Site Visit
- Forms
- Written Certification

Monitoring Documentation

- Running tally of DBE participation
- List of participating DBE firms
- Follow-up on any anticipated shortfall
- Termination/substitution procedures (26.53)
- Track change orders and their impact

Monitoring Documentation

- Prompt Payment Monitoring
 - Proactive
 - Documented
 - Receipt verified
 - Identify/document issues and follow-up
 - Retainage
- Report Complaints

Monitoring Documentation Close-Out

- Final accomplishment determination
- Monitoring cannot be performed solely at close-out
- Ensure contractual obligations are met, payments, retainage, etc.
- Final written certification

DBE Participation Reporting

Counting/Reporting

- Proper Counting of Participation
- Federal Dollars Reported
- DBE firm information
- Race Neutral/Race Conscious
- Shortfall Analysis and Corrective Actions

Contract Compliance File Contents Sample Compliance Checklist

Note: The Sample Compliance Checklist is not a U.S. DOT officially approved document and recipients are not required to use it.

Sample Compliance Checklist

- ✓ Goal Analysis Document
- ✓ Solicitation Specs Review
 - Contract Goal (if Race Conscious)
 - Contract Language Requirements
 - Good Faith Efforts Requirement/Procedures
 - Bidders List Forms and Instructions (DBE)

Sample Compliance Checklist



Contract Review

- Nondiscrimination language (26.13(b))
- Contract goal, if applicable
- Termination/substitution language (26.53(f))
- Prompt payment/retainage language (DBE - 26.29)



Written Certification

- Summary of findings
- Follow-up actions

Sample Compliance Checklist



Solicitation Review

- Verification of Submission of DBE List/Information (26.53)
- Verification of NAICS codes
- GFE review (only if goal is not met)
- Reconsideration, written decision



Findings of the Solicitation Review

Sample Compliance Checklist

Subcontract/Joint Venture Review



ALL Subcontract Agreements

- Nondiscrimination language (26.13(b))








DBE Subcontract must reflect type of work and dollar amount listed in bid



Written certification

- Records Reviewed
- Summary of Findings
- Follow-Up Actions

Sample Compliance Checklist

-  CUF Job Site/Work Site Reviews
-  Additional Site Reviews
-  Other Records
-  Running Tally of Actual DBE Attainment
-  Prompt Payment Reviews/Verification





Sample Compliance Checklist



Appropriate Procedures Used for Any Termination/Substitution Request Written Certifications

Sample Compliance Checklist

Close-Out

-  Monitor All Commitments
-  Monitor Payments/Distributions
-  Summarize any Issues
-  Provide Final Certification

Recommendations

- Be Prepared
- Ensure Proper Records
- Keep Records Updated
- Relax
- Learning Opportunity

Questions?